United States Court of Appeals for the Second Circuit



APPENDIX

UNITED STATES COURT OF APPEALS SECOND CIRCUIT

IRVING MALAWER and RUTH MALAWER,

Petitioners-Appellants

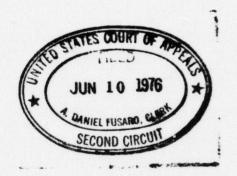
V.

CCALISSIONER OF INTERNAL REVENUE,

Respondent-Appellee

P

APPENDIX AND XHIBITS



Herbert S. Tepper and Stuart Malawer Attorneys for Petitioners-Appellants c/c Herbert S. Tepper 1 Old Country Road Carle Place, New York 11514 (516) 294-8771 PAGINATION AS IN ORIGINAL COPY

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	. Treasury Department		(1	1 /	, 10	
int	cinal hereand Service	or other taxabin year is	minutes (milas), tr	HE GREEK HOLD		
Che A :	ek it this is a -	Nomo /	TRANSTER.	~ - 00.00		E. Business Ozio Ho.
	signed hip 11 electing		11.5(47-11-25)	COCKOLL	1100	6550
	Sold and constration.	Number and street	AT 4-20 Li	11 1 0.	V.22	F. County in which located.
C .	les ressal Holdmar Co. 11			100 FM 100	<u> </u>	G. Enter total assets from line
10.	implayer Identification to.	City or town, postal zone r				13 Sch. L (200 Instr. R).
	_	MIAMI	BEACH !	=「つら」)と	23139.	0.00717511.
	(C.202.70241.500		ules must be filled in. Hit			
•			THE CONTRACTOR OF THE PARTY OF			
1			and/or operations (attac			
27.00						
First 1						
(.)		gations of the United S			Amortizable premium	
						NO /
2.0	(b) After 2-28-	-41				
53	6. Other interest.					COPPLETED IS
200						
CE	2. Royalties	.	• · · · · · · · · · · · · · · · · · · ·		<i></i>	
9						
	ii. TOTAL	income, lines 3 to 10,	inclusive			
•						
100						
Tions						
(C)						
	21. Amortization (attach schedule)	·····/····/›	٠٠٠٠٠٠٠٠٠٠٠٠٠٠٠٠٠٠٠٠٠٠٠٠٠٠٠٠٠٠٠٠٠٠٠٠٠٠	•••••	
63	22. Depreciation (Schedule G)	······{···›{···›}{····	·/·······		
DEBI						
E.						
3						
			ee instructions)			
			to 26, inclusive			
						どので
			on (see instructions—atla			
						- None
	(b) P	ayments and credits on	n for extension of time to f 1962 Declaration of Estimates Wastman's as propriets (atte	mated Tax	***************************************	
93	(c) C	redit from regulated in	westment campanies (atto	ich Form 2439)		
TARK			n Form 3468;			
	33. If tax (line 31)) is larger than credits	(line 32), the balance is	TAX DUE. Enter	balance here>	SIGNE
	34. It lax (line 31)) is less than credits (li	ine 32)	Enter the OVERPA	AYMENT here>	
						1
the	I declare under the	e penalties of perjury	that I have examined to correct, and complete. I	is return (including	accompanying schedu	ies and statements) and to
On	all information of wh	hich he has any knowle	edge.			
C	ORPORATE 112	116.5	(Signature c	CoCons	1222	(Title)
1_	BUVE				•	(1110)
••••	(Data)	fledividual or b	rm signoture of preparer)		(Addre	na)

Schedule L.—EALA	INCE	SHEETS. (S	See Instructions)			
			taxable year	End of taxable year		
Assets		(A) Amount	(B) Total	(C) Amount	(D) Total	
1. Cash					700.00	
2. Notes and accounts receivable					1	
(a) Less: Reserve for bad debts		- Andrewson Construction and the Construction of the Construction			₹	
3. Inventories					1	
4. Investments in Government obligations			***************************************			
5. Other current assets (attach schedule)			20			
6. Loans to stockholders			,		1157,07	
7. Other investments (attach schedule)			OPERATIONS			
8. Buildings and other fixed depreciable assets	.	•••••		***************************************		
(a) Less: Accumulated amortization and depreciation						
9. Depletable assets				***************************************		
(a) Less: Accumulated depletion. 10. Land (not cl any amortization)		-				
10. Land (net of any amortization)					402818.14	
11. Intangible assets (amortizable only)		*************			1	
(a) Less: Accumulated amortization						
12. Other assets (attach schedule)						
13. Total assets	-				-0717511	
LIABILITIES AND CAPITAL		•	•			
14. Accounts payable				*		
15. Mortgages, notes, and bonds payable in less than 1 year.						
16. Other current liabilities (attach schedule)						
17. Loans from stockholders					38007-80	
13. Mortgages, notes, and bonds payable in 1 year or more						
19. Other liabilities (attach schedule)	•					
20. Capital stock:			•			
(a) Preferred stock						
(b) Cornmon stock				169167.36	169167.36	
21. Paid-in or capital surplus	KIND FOR DESIGN					
22. Surplus reserve (attach schedule)						
23. Earned surplus and undivided profits						
24. Total liabilities and capital					1-175.16	
Schedule M.—RECONCILIATION OF TAXABLE INCOM	E AN	d analysis	OF EARNED SUR	PLUS AND UNDI	VIDED PROFITS	
1. Earned surplus and undivided profits	9.	Total distributi	ons to stockholders	charged to earned		
at end of preceding taxable year	Ė	surplus durin	ng the taxable year	: (a) Cash		
(Schedule L) 2. Taxable income before net operating			e corporation			
loss deduction and special deduc-		(c) Other proj	erty (attach schedu	ıle)		
tions (line 28, page 1)			in excess of 5% limit			
3. Nontaxable interest	11.	Federal incom	e and excess profits	s laxes		
•••••••••••••••••••••••••••••••••••••••	.12	Tuesaus 1	it taasiin aasaa t	17-11-1 Color		
	14.	possessions i	of foreign countries if claimed as a cre	dit in whole or in		
4. Other nontaxable income		part on line	6, page 3 Tax Con	putation		
	12	Incurance mus	miums paid on the	Vila al ann alliana		
***************************************		or employee	where the corpora	tion is directly or		
5. Charges against surplus reserves de-		indirectly a	beneficiary			
ducted from income in this return	14.	Unallowable i	nlerest incurred to	purchase or carry		
······································		tax-exompt i	nterest obligations.			
•••••••••••••••••••••••••••••••••••••••		•	tal losses over capi			
6. Adjustments for tax purposes not re-			irplus rosorves (atte			
corded on books	17.	Other unallow	able deductions (at	tach schedulo)		
••••••	18.	Adjustments fo	r tax purposos not i	ocorded on books		
		(attach scho	dule)	• • • • • • • • • • • • • • • • • • • •		
7. Sundry credits to carned surplus	BOOTH STATE OF THE STATE OF		to carned surplus (
	20.	Total of	linos 9 to 19	• • • • • • • • • • • • • • • • • • • •		
001-	21.		and undivided pro			
8. Total of lines 1 to 7	1		r (Schedule L) (line			

	Const	. U.S. 830200	T.C. Q.	Cyly	ETEM!—1983	
	Integnal meets	Name	COLACI	. TY. J. ending		
s	Cheer is this is a A state of control of the or of the	ROMETY TRAN-	SFER.	co Co Co Co	7001	E. cauplayer identification lies
	and the return. O	mamiter and elmet				F. County in which incretes.
	(4550)		. • • •	- 0 :	Postal ZIP code	G. Enter total assets from his a
:		MIAMI BE	1611	1- rough	33139	: 319153.32
**	APORTANT-A COOP	blicable lines and schedules must b	e filled in. If	the lines on the school	11	
- E	2. Less: Cost of g	poods sold (Schedule A) and/or op	prations (att	ch specials	icos	
8	3. Gross pront	edulo C)				
5	4. Dividends (Scho	edule C)	•••••	· · · · · · · · · · · · · · · · · · ·	***************************************	
1.4.1	5. Interest on oblid	gations of the United States and L	J.S. instrumer	atalities		
v	6. Other interest.	·····	• • • • • • • • • • • • • • • • • • • •			
- 1	7. Kents			• • • • • • • • • • • • • • • • • • • •		••••••••••••••
	8. Royalties	(irom suparate Schedule D)	• • • • • • • • • • • • •			***************************************
S	9. Not gains (losse	i) (irom separate Schedule D)		· · · · · · · · · · · · · · · · · · ·		***************************************
	10. Other income (o	ncome, lines 3 to 10, inclusive		•••••••••••••••	•••••	
_	11. TOTAL I	ncome, lines 3 to 10, inclusive	· · · · · · · · · · · · · ·			
	12. Compensation o	of officers (Schedule E)				
	13. Salaries and wa	iges (not deducted elsewhere)		***************************************		•••••••••
	15 Politic (Go not	include cost of improvements or c Schedule F if reserve method is u	apital expend	ditures)		•
	15. Bod debts (from	Schedule F if reserve method is u	sed)	•••••		
	10. Kents	chedule)		••••••		311110
	12. Idxes (attach so	chedule)		•••••		
[2	19 Contailed	chedule)		• • • • • • • • • • • • • • • • • • • •		476795
0	20 Land Sulfans of	gifts paid (attach schedule—see orm, shipwreck, or other casualty	instrucțions fe	or limitation)		
H	20. Losses by fire, st	orm, shipwreck, or other casualty	or theft (atto	ch schedule)		*******
CER	22. Amortization (att	dach schedule)hedule G)		.1		
5	22. Depreciation (Sch	hedule G)	~			
53	24. Depletion (attach	schedule)				
	22. Advertising	it-sharing, stock bonus, annuity r		***************************************		••••••
1	(a) Pension, prof	it-sharing, stock bonus, annuity p yee benefit plans (see instructions	olans (see ins	tructions)	••••••••••••	•
	25 Other employ	yee benefit plans (see instructions statuch schedule))	• • • • • • • • • • • • • • • • • • • •		
	27. Other caductions	ductions in lines 12 to 26 inclusive				
	28. Tayabla inner 1	ductions in lines 12 to 26, inclusive performent operating loss deductions	/e			7 574 75
						-1787675
	(b) Specie	erating loss deduction (see instruct	tions—attach	schedule)		
	30. Taxable income	l deductions (Schedule I)	• • • • • • • • • • • • • • • • • • • •			
I	The same of the sa	10 20 1033 III 23)				-(75-3-0-7
						670:1:-
-1		The state of the s	r exiergion lo	Horan manual		15,57165
13.62						
-0		and regulated mivesument comp	anies lattach	Form 2/301		
- 1						NONE
	35. Enter amount of li-	less than credits (line 32) the 34 you want: Credited on 1964	E	nter the OVERPAYM	ENT here	Dona,
	inder panalting of -		Tammaica ida		Refunded	
n al	information of which	rjury, I declare that I have exa nd belief it is true, correct, and cor he has any knowlodge.	mined this re nplete. If pr	eturn, including acceepared by a person	ompanying schedules a other than taxpayer, his	nd statements, and to s doclaration is based
COI	SPORATE 2/19/					
	Dot	5.4	Signature of	~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~	PRCS.	
	•			cor .		Title
	Date	Individual or firm signature of pre	parer	****		

		Beginning	of taxable year	r	
	Assets	(A) Amount	(B) Total		arable year
i. Cash				(C) Amount	(D) Total
2. Notes	and accounts receivable	1	XO2-02	•	
(a)	Less: Reserve for bad debts		1		-
3. Invent	tories		-		
4. Invest	ments in Government obligations		!		
5. Other	current assets (attach schedule)				
6. Loans	to stockholders		1157.02		
7. Other	investments (attach schedule)				
8. Buildi	ngs and other fixed depreciable assets				
(a)	Less: Accumulated amortization and depreciation		1.		1
9. Deplot	table assets				
(a)	Less: Accumulated depletion (and of any action tradition)				
10. Land	(not of any amortization) - 100		41.812200		319153,33
11. Intang	gible assets (amortizable only)		1		
(a)	Less: Accumulated amortization		1	***************************************	1
12. Other	assets (attach schedule)				
13.	Total assets		21170		31965333
	LIABILITIES AND CAPITAL				
14Accou	T. COLLEGE DING Soldayage en				10154
15. Mortgo	ages, notes, and bonds payable in less than 1 year			1.	4800000
16. Other	current liabilities (attach schedule)				
17. Loans	from stockholders		0250000	and the second	110-1,3.48
18. Morigo	ages, notes, and bonds payable in 1 year or more				
19. Other	liabilities (attach schedule)				
20. Capito	al stock: (a) Preferred stock		1.		
\ .	(b) Common stock	169167.36	16916736	16916734	169167.35
21. Paid-ir	or capital surplus (attach reconciliation)				
22. Surplu	s reserve (attach schedule)				
23. Earned	d surplus and undivided profits				- (-(544.44)
24.	Total liabilities and capital		207175.16		31915393
	ENTRIES MADE BELOW M	MUST BE IDENT	IFIED BY ACCOU	JNT	
	Schedule M-1.—RECONCILIATION OF IN	COME PER EO	OKS WITH INCO	ME PER RETUR	2N
1. Net inc	ome per books	1.05 7 Income	rac d as bash		
2. Federo	al income tax	cluded	in this return (itemiz	this year not in-	
	of capital losses over capital gains	Ciddea	in ans return (itemiz	6)	4
4. Taxab	le income not recorded on books this		•••••••••	•••••••••	
year (i	term ++)				
		8. Deducti	ons in this tax ret	irn not charged	
*******	·		book income this ye		
5. Expens	ses recorded on books this year not de-				
ducted	in this return (itemize)				

		9. T	otal of lines 7 and	3	NONE
6.	Total of lines 1 through 5	n < 1 10. Income	(line 28 page 1)-	line 6 lose 0	-(7879.0
Sch	nedule M-2.—ANALYSIS OF EARNED SURPLUS	S AND UNDIVID	ED PROFITS PE	R BOOKS (line 2	23. page 4)
	e at beginning of year		tions: (a) Cash		
	omo per books(71279	1.05	(b) Stock	• • • • • • • • • • • • • • • • • • • •	************
	increases (Itomizo)	~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~	(c) Property		******************
		6. Other d	ocreases (itemize)		******************
••••••			ecrouses (nomize)		

********			otal of lines 5 and 6		NO.
4.	Total of lines 1, 2, and 3		end of year (line 4		10000
		IENT PHISTING OFFICE: 1963-C	0-693-265	1035 2]	- (7-(d'02)

· AMENDED FINAL RETURN

	FORM 1120	U.S. CORPORATION INCOME TAX RETUR	
_ 1	aternal Revenue Service	or other taxable year beginning	
	Sole proprietorship [] or partnership [] electing	Name	The second secon
	under sec. 1361 to be	REALTY TRANSFER CORPORATION	3
	taxed as a corporation Consolidated return.	Number and street	F. County in which isosied.
Management of the last of the	Personal Holding Co. [7] Business Code No.	SUITE 394 400 LINCOLD ROAD	DADE
ŭ	(see instructions)	City or town, State, and Postal ZIP code	G. Enter total assets from line 13 Sch. L (see instruction E).
	6550	MIAMI BEACH FLORIDA 3	
IM			3139 ; NONE
_	All app	licable lines and schedules must be filled in. If the lines on the schedules a	re not sufficient, see instruction Q.
6.3	1. Gross receipts o	or gross sales Less: Returns and allowances	MOTOR OF
H	Less: Cost of g	cods sold (Schedule A) and/or operations (affach schedule)	%
INCOME	. Gross prout	• • • • • • • • • • • • • • • • • • • •	
5	1 % Dividends (Sche	dule Cl	
	5. Interest on oblig	gations of the United States and U.S. instrumentalities	
60		* * * * * * * * * * * * * * * * * * * *	
6	2 Panaltina		
SHOES	9. Net gains flores		
O	18. Other income (c	se) from separate Schedule D. stach schedule)	(33954.73)
	11. TOTAL	ncome, lines 3 through 10	15.04
_	12. Compensation of	of officers (Schedule E).	(33951419)
	13. Salaries and wa	ages (not deducted elsewhere)	34.4 F
	14. Kepairs (do not	include cost of improvements or conital expenditures)	2.21/
	15. Bad debts (from	Schedule F if reserve method is used)	373103
	18. Rents		H-211-157
	17. Taxes (attach s	chedule)	1501
••	15. Interest. Au. D.	MK. HARGED	182910
22		And love former scrieding and instructions for limitation).	
EDUCTIONS	EV. LOSSOS DY hre, s	form, shipwreck, or other casualty, or their (attach schedule)	and the state of t
100	es. Amoruzation (a)	nach schedule)	Accept annual accept and a second acceptance acceptance and a second acceptance accept
3			
	23. Depletion (attac	h schedule).	political di della companya di
	was wassing	• • • • • • • • • • • • • • • • • • • •	1 VILLOW
A	25. (a) Pension, pro	xit-sharing, stock bonus, annuity plans (see instructions)	
	(b) Other empto	byee benefit pigns (see instructions)	
	ee. Outer deduction	is (didch schedule)	14517.50
	ar. IOIAL d	eductions in lines 12 through 26	777-568
	23. Taxable income	before net operating loss deduction and special deductions (line 11 less lin	· 27[4] 7×9.87]
	29. Less: (a) Net of	perating loss deduction (see instructions—attach schedule)	16.79.05
	(b) Specie	al deductions (Schedule I)	7879.05
-	30. laxable income	(line 28 less line 29)	(4081 (5x4) - (4x5) 189x)
	31. TOTAL in	ncome tax (from line 10, Schedule I)	Shots
	Credits: (a) lax	paid with Form 7004 application for extension (attach copy)	
TAX	(b) Pay	ments and credits on 1964 declaration of estimated tax	
2		dit from regulated investment companies (attach Form 2439)	
	34 If tox (line 31) is	s larger than credits (line 32), the balance is TAX DUE. Enter balance	here
	35. Enter amount of l	s less than credits (line 32) Enter the OVERPAYMENT	here
	Under penalties of r	berjury. I declare that I have examined this return, including accompand belief it is true.	
the i		and belief it is true, correct, and complete. If prepared by a person other has any knowledge.	inying schedules and statements, and to r than taxpayer, his declaration is based
Con	PRPORATE 2/		
1 "	SEAL 19	Jule G.M. Signature of officer	LAES
-		Signature of officer	Title
	Date	Individual or firm signature of preparer	Address
			- AVJIVE

	1120 (1964)										
Sch	edule A COST OF GO	OODS SOLD (S	ee instru	ction 2	1. Wa	s inve	ntory volued	ot-C	ort D	law i	cost or market
•	Where avantones are	an income determinin	ig lactor)		LIFC) []:	other []?	other,	attach	explanati	cost or market
1. Ir	ventory at beginning of y	ear			1 . ING V	e wn	te-downs bee	n made			V 17
	erchandise bought for mar			1							
3 5	plantes and wages			•••••	(b)	Hive	centage real	ctions	from th	e total inv	entory
4. 0	ther costs per books (attac	h schedule)		• • • • • • • • • • • • • • • • • • • •	1 "	H.	or b	is chec	ked, e	nter the p	ercentage of wri "c" enter the doll (If not availab
					1	do	ount of write	6. For	""a,"	"b," or	"c" enter the doll
5. To	xal				2 347-	est	imate and in	dicate t	hat the	figure is	an estimate.)
•			•••••••••••••••••••••••••••••••••••••••	·•	Yes Yes						uring the year? thow the closing
6. Le	es: Inventory at end of ye	ar									
7. C	ost of goods sold (enter her	e and on line 2			qua:	ntities	costs or value	itial ch	ange i	n the mar	ner of determini
	page 1)	•••••			NOTE !	Seino:	Yes 🗆 N	o D.	If "Yes	," attach	explanation.
		Sch	edule C.	-INCO		II CHIEC	VIDENDS	be give	n to a qu	ethon, attac	h esplanation.
	1. Name of declarie	As corporation		2 Demei	tic corporati		Certain prefers	ed stock			1
				Interna	Revenue Cod	• 1	under chapter 1.	internal	4. Foreig	A corperations	5. Other corporation
						_ -					
				*********	•••••••••••••••••••••••••••••••••••••••					••••••••	
	**********				······································			*******	••••••	•••••••	
		··			**********				*****		
	Totals										
	Total of columns 2, 3, 4, a	and 5									
	The diversity the party pie	A sucheporded of oc	ontrolled is	preign o	proporation	latta	ch etatement				
	sour former mere dist ou	une 4. Doce II									
chec	dule DSeparate School	lule D (Form 112	O) should	be use	d in repo	rting	sales or exc	ange	of pro	merty (Rea (metrocettes
	Sch.	edule E.—COMP	ENSATIO	ON OF	OFFICER	es æ	See page 5 o	inetn	ottone	1	Jee Maddedon .
	1. Name and addre				3.1	ime de-	Percent of corp	oration			
~				2. Officia		ted to	4. Common 5.	rd		movet of	7. Expense occount allowances
SEO	ACE MENTER - 116	YI PUEENS	BLUB	PAE	T. A.	Recai	- Y3	19101190		ONE	The second second
	FOREST HILL	& NY									NONE
JAC	K MALAWER- BOI	MAK AVE NY	~ y V	ice . F	ies we	(0)	19.6	*******		ع دمه ل	None
(KV)	ME WELLER . WO	WEST 44 ST	MY F	ccy. Th	EAS AS	Real	\$8.W			JON &	None
	Total compensation of off	icers (enter here a	nd on line	12. pa	o 1)		,			lave	- FOUTE
	8	chedule F.—BAI	DEBTS	-RESE	DUE ME	THO	D /9 :			NOWE	1
. Tax-						Ino	/See Tue	ruction	(15)		
able year	2. Trice notes and accounts re- ceival to outstanding at end of year	1. Sales on acce	wat	6. Gn	es amount add	ed to	S. Amount	charged ag	poinet	6. Reperv	o for bed debte at and
					1000110			661/16			of year
961.			**********		•			*******			
962.	***************************************		*******		************			•••••			************
963.											
964.	TP C	**********			•••••			-			
	TE: Securities which are capital	assets and which been	ame worthle	es within t	he tazable y	ear she	ould be reported	in sepai	ate Sche	dule D.	
.		Schedule	GDE	PRECL	TION O	See ir	struction 22)			
2-21	chedule is designed for to as well as for those taxp	xpayers using the	alternativ	ve guide	lines and	admi	nistrative pro	cedure	e descr	ibed in R	venue Procedum
eadin	as well as for those taxp gs appear use the first hea	ading for the new p	procedure	and the	second he	autho	prized prior to	the Re	Prenue	Procedure	. Where double
		2. Cost or other basis	3. Asset ad	-			1		JUI V.		
	1. Group and guidotine class	at beginning of year	in year (ar	noust)	4. Asset retir	ements ount)	5. Depreciati		Method	7. Class life	8. Depreciation for
	Description of preparty	Cost or other besis	Dete acq	uired	ia year (am (applicable of Rev. Proc. 6	2-21)	in prior year	. 0	mouting	Rate (%)	the year
Tota	al additional first-year dep	poplation (do) (<u> </u>	- !	,		1	1			
		Column (do not it	ciude in i	tems be	(MO)					>	***************************************
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			***********		••••••	•••••			*******	******	
					•••••	******			•••••		
Toto	da				•••••••	•••••					
		platmad to C. L. L.		• • • • • • • • • • • • • • • • • • • •	• • • • • • • • •	• • • • •	••••	•••••	• • • • • •	• • • • • • • •	*******
Bale	Amount of depreciation of ance—Enter here and on I	in 32						•••••	• • • • • •		
Cont	or other hade at full t	me 22, page 1	· · · · · · · · · · · · · · · · · · ·	• • • • • • •	• • • • • • • • •	• • • • •	• • • • • • • • • • • •	<u></u>			. 1
	or other basis of fully dep	preciding desets still	i in use								
						ESTATION OF				THE RESERVE OF THE PERSON NAMED IN	AND PROPERTY OF THE PARTY OF TH

(Form 1120)

U.S. Treasury Department-Internal Revenue Service

GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY

1964

Name and address REALTH TR	alesea (nol	bros	(poi	Sui	TE 3'	14 H	ro Lin	veolal 6	2000 M	À	AFARL O
PART I.—GAIN FRO	M DISPOSITIO	N OF	DEPR	ECIAB	LE PR	OPERT	Y UND	ER SEC	TIONS 1	245 AND 125	0-8	nets Held More
Kind of property of necessary, attach statement of descriptive details not shown below)					acquired lay, yf.)	c. Date (mo., de	sold y. yt.)	d. Gross sales price		e. Cost or other basis, cost of subsequent improvements (if not purchased, attach appla- aation) and expense of sale		
1												······································
		•••••				i		••••••	••••••••••		•••••	
t, Depreciation allowed (or (attach)	Ellowable) since acquis schedule)	tion		. Adjusted s sum of f-	bears		A. Total gr	ui a	L Or (lesse	Ginery gain of 1-2 or h)		j. Other gain
1-1. Prior to January 1, 1962 Prior to January 1, 1964	1-2 After December After December 31		(e less	s sum of I-	-1 and 1-2)		(d kess g	•		-CR		(h less u
				•••••					-			······································
2. Total ordinary gain									:		T.	po acessa e como
3. Total other gain.	PART II								R SECTIO	ON 1231	<u> </u>	
a. Kind of property (if necess- of descriptive details not	ary, attach statement		acquired	c. Dat (ma., d	te sold		sales price	e. Deprec	istion allowed wable) since tursition h schedule)	f. Cost or other be cost of subsequent provements (if not chased attach expir tion) and expense of	pur-	g. Gath or loss (d plus o less f)
4	•••••						•••••					
			•••••		•••••		•••••••			••••••••••		•
5. Total (li gain, ente	r on line 9: if lo	as ente	r on lin		Identify	, as gai	n or loss	from Pa	→ II.)			
or rotal ta gain care	Short-Term		P	ART I	II.—C.	APITAL	AESET	3			,	
6		ļ		 			••••••	ļ				
	· · · · · · · · · · · · · · · · · · ·		••••••		••••••					••••••••		
					••••••					**********		
7. Unused capital los 8. Total of short-term				noe het	waan sh	ort.term	conital		d losses			
G. Total of Biolinein	Long-Te	rm Ca	pital G	ains a	nd Los	oes—As	sots Held	More	Than 6 M	lonths	1	
9	••••••				••••••		•••••					
					•••••			******				
10. Tatal (1)			ΔιU									
10. Total of long-term of	capital gains or le	RT IV	PR	OPERT	Y OT	HER T	HAN CA	PITAL	ASSETS			
L'ENECHOLD	r.FixTusts.	Awa	4 ous	19	64 64					ভাগুর ভাগুর	5.	(335)19.19 (519.00
EQUIPMENT.		Los II	15.4	19	rprit					34902	13	(349050

12. Total net gain (or loss). Enter here and on line 15.

INSTRUCTIONS

22. Alternative tax (line 20 plus line 21). If applicable, enter on line 3, Schedule I, Form 1120, and write "alt." in the margin to the right of the entry......

(References are to the Internal Revenue Code)

Gains and losses from sales or exchanges of capital assets and other property. - Report sales or exchanges of capital assets and sales or exchanges of property other than capital assets in Schedule D. Every sale or exchange of property, even though no gain or loss may be indicated, must be reported in detail.

asses from sales or exchanges of capital assets shall be allowed by to the extent of gains from such sales or exchanges. However, an ount of a net capital loss sustained in any taxable year may be owned over to each of the five succeeding taxable years for to the extent such loss is attributable to a foreign expropriation loss of the ten succeeding taxable years). A net capital loss retreated in each such succeeding taxable year as a short-term capital loss to the extent not allowed as a deduction against any net capital gains of any taxable year intervening between the taxable year in which the net capital loss was surtained and the taxable year to which carried.

Definition of capital assets.—The term "capital assets" means property held by the taxpayer (whether or not connected with its trade or business) but does not include (1) stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business; or (2) property used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 167, or real property used in the trade or business of the taxpayer; or (3) certain copyrights, literary, musical, or artistic compositions, or similar properties; or (4) accounts or notes receivable acquired in the ordinary course of trade or business for services rendered or from the sale of property described in (1) above; or (5) an obligation of the United States or any of its possessions, or of a State, or any political subdivision thereof, or of the District of Columbia, issued on or after March 1, 1941, on a discount basis and payable without interest at a fixed maturity date not exceeding 1 year from the date of issue.

Basis.--In determining gain or loss for properly acquired after February 28, 1913, use cost, except where property was acquired by bequest, gift, tax-free exchange, involuntary conversion, or wash sale of stock; see sections 1014, 1015, 1031, 1033, and 1091, respectively. If the amount shown as the basis is other than actual cash cost of the property sold or exchanged, full details must be furnished regarding the acquisition of the property.

Losses on securities becoming worthless.—If any securities become worthless within the taxable year and are capital assets, the loss resulting therefrom shall, in the case of a taxpayer other than a bank, as defined in section 581, be considered as a loss from the sale or exchange, on the last day of such taxable year, of capital assets. Section 165(g)(1).

Losses not allowable. - No loss is recognized for wash sales of stock or securities. Section 1091.

No loss is allowed (except distributions in liquidation) between related persons. Section 267.

Gains from section 1245 or 1250 property held more than 6 months (Part 1).—(Report any gain from such property held for 6 months or less in Part IV.) Except as provided below section 1245 property means depreciable (a) personal property (other than livestock) including intangible personal property; (b) tangible real property (except for buildings and their structural components) if used as an integral part of manufacturing, production, or extraction, or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services, or used as a research or storage facility in connection with these activities; and (c) elevators or escalators.

Except as provided below section 1250 property means de-preciable real property (other than section 1245 property).

See sections 1245(b) and 1250(d) for exceptions and limitations involving: (a) disposition by gift; (b) certain tax free transactions; (c) like kind exchanges, involuntary conversions; and (d) sales or exchanges to effectuate FCC policies and exchanges to comply with S.E.C. orders.

Column f of Part I.—In computing depreciation allowed or allowable for elevators or escalators enter in column f-1 depreciation prior to July 1, 1963, and in column f-2 depreciation after June 30, 1963.

Column i of Part I, section 1250 property only.—If held for more than 6 months, but not more than 1 year, enter the smaller of

(1) column h, or (2) column 1-2.

If held for more than 1 year, enter the result of multiplying the smaller of

(1) column h, or (2) column f-2 less the amount of depreciation computed for the same period using the straight line method, by the percentage obtained by subtracting from 100%, one per-

centage point for each full month the property was held in excess of 20 months. Where substantial improvements have been made within the preceding ten years, see section 1250(1).

Gain on sales by a "controlled" corporation.—In the case of a sale or exchange, directly or indirectly, of property between an individual and a corporation more than 80 percent in value of the outstanding stock of which is owned by such individual, his spouse, and his minor children and minor grandchildren, any gain recognized to the transferor from such sale or exchange shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231, if such property in the hands of the transferee is depreciable under section 167. Section 1239.

Installment sales.—If you sold personal property for more than \$1,000 or real property regardless of amount, you may be eligible to report any gain unds. the installment plan if (1) there is no payment in the year of sale, or (2) the payments in the year of sale do not exceed 30% of the selling price. Section 453.

For treatment of a portion of payments as "unstated interest" on deferred payment sales, see Section 483.

(Instructions continued on reverse of duplicate)

10-78307-1

REALTY TRANSPER CORPORATION
SUITE 394 440 LINCOLN RIAD MIAMI BEACH, FUT

SALES TAX PAYABLE

NET OPERATING LOSS DEDUCTION

LOSS F.Y.E. 1/31/23 - (717905)

			Page
(Amali business investment companies and members of affil	CIAL DEDUCTIONS	consolidated many	
1. Dividends-received: (a) 85 percent of column 2, Schedule C			instructions)
(c) 85 percent of dividends received from cert	tain femion somewhat	,	
(c) 85 percent of dividends received from cert 2. Total dividends-received deductions (sum of lines 1(a), (b), and (c) 28, page 1 over line 4 of this schedule). (The 85-percent lim operating loss occurs.)		Lage III MITTELL O USE	
3. Dividends paid on certain preferred stock of public utilities (see thethe	offens in cose of net connecti		
The state of the s	not opposition lass and that		
5. Total special deductions—Add lines 2, 3, and 4. Enter here and	on line 29(b), page 1	for moat year)	
SCHEDITLE I	W CORFFE WE SHOW		
(Component members of controlled corpora	te group use Form 3920 to	compute your tax)	
1. Taxable income (line 30, page 1)			
and at Children Ca lines 1 12:			
(a) Not over \$23,000—Enter 22 percent of line 1			
the contract of belowing miss in the contract of the contract			
publication of the street contained the street of the stre		7 000 00	
- Coops and Creat (discon Form 1116)			
,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,			
at Myseument Credit (duach Form 3408)			
the transfer section of the internal kevenue (and from Schools	1 1120 DED		
The same recompanied prior year investment credit (chach statement	(mand)		
18. Total tax—Add lines 7, 8, and 9. Enter here and on line 31,	age 1		
SCHED	IT.F FV		
(Fiscal year tax computation schedule for t	axpayers with taxable in	oome over \$25,000)	
1. Taxable income (line 30, page 1)			
be so percent of line 1			B comment
Subtract \$7,000 and enter difference		7 000 00 1	
L 48 percent of line 1	· · · · · · · · · · · · · · · · · · ·		
\$. 48 percent of line 1 Subtract \$6,500 and enter difference.	• • • • • • • • • • • • • • • • • • • •	6,500.00	
 Amount on line 2 or alternative tax (separate Schedule D) multiplies prior to January 1, 1965, divided by the total number of days in 	d by the number of days is the taxable year	n the taxable year	
 Amount on line 3 or alternative tax (separate Schedule D) multiplie after December 31, 1964, divided by the total number of days in 	ed by the number of days to	n the taxable year	•
the mount ici - Add lines 4 and 5. Enter here and on line 3 School	ule I		
L. Date incorporated AVGUST 84757		leduction for expenses con	nected with:
L (1) Did the corporation at the end of the taxable year own die	(1) A hunting	lodge . working ranch or	form [] fishing
rectly or indirectly 50 percent or more of the voting stock of a domestic corporation?	similar facility []?	Other than where the c	cht , or other
(2) Did any corporation, individual, partnership, trust or associate	racility was the pri	ncipal business.) Yes	No D
ciation at the end of the taxable year own directly or indirectly 50 percent or more of the corporation's voting	(2) The leasing	g, renting, or ownership of nt . or other dwelling	a hotel room or
stock/Yes No Fil	used by customers	or employees or members or	their families?
(For rules of attribution, see section 267 (c).) If the answer to (1) or (2) is "Yes," attach separate	(Other than use by	employees while in busines	
schedule showing:	(3) The attend	lance of your employees' f	Yes No
(a) name, address, and employer identification no.; and (b) percentage owned.	ventions or busines	s meetings? Yes No No	
If the answer to (1) above is "Yes," include the income	(4) Vacations i	or employees or members of t reported on Form W-2.)	their families?
(or loss) from line 30, page 1, Form 1120 of such corporation for the taxable year ending with or within your taxable year.	Refer to instructions	and state the:	
J. Did you have any contracts or subcontracts subject to the	Principal preduc	A CONTRACTOR NOTO	/ Pesco
Renegotiation Act of 1951		er of a controlled group with 1561? Yes No V or	section 1562?
		of relationship: 1. parent	Yes No KZ
Did you at any time during the year own directly or indirectly any stock of a foreign corporation?Yes No W	2. brother-sister [section 1563).	3. combination of (1)	and (2) (see
If "Yes," attach statement as required by instruction N.	P. Were you in 1963	a component member of a c	introlled group
1962	If so, were you repr	tion 1563? Yes No Wesented in a consolidated r	eturn?

		Beginning o	texable year	Thid of ta	rable year
	ASSETS	(A) Amount	(B) Total	(C) Amount	(D) fetal
1.	Cash				
2.	Notes and accounts receivable				
	(a) Less: Recerve for bad debts		* 1 34 14 14	***************************************	
3.	Inventories			Alexander of	A STATE OF S
4.	Investments in Government obligations	. 3		1 461 1 14 7 17 17	
5.	Other current assets (attach schedule)			1.46	
	Loans to stockholders		10 m + 874 \$179		
7.	Other investments (attach schedule)		100 TO 100 M TO 100 TO	Mr. 19 1 28	
8.	Buildings and other fixed deprectable assets		TOTAL PARTY		
	(a) Less: Accumulated amortization and depreciation		3		The state of the same
9.	Depletable assets				
	(a) Less: Accumulated deplation.				
10.	Land (net of any amortization)	1	3196333		
	Intangible assets (amortizable only)				·
	(a) Less: Accumulated amortization	*			
12	Other assets (attach schedule)				
13.	Total assets	24	31965333	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	3000
	LIABILITIES AND CAPITAL				-
14	Accounts payable BANK DIERDRAPT		10124		
	Mortgages, notes, and bonds payable in less than 1 year.	The second second	10124	re positive bern.	741000
	Other current liabilities (attach schedule)			1	40074
	Loans from stockholders	port perconduction	11046348	to programme tens.	2021
	Mortgages, notes, and bonds payable in 1 year or more				
	Other liabilities (attach schedule).			0.000 40	
	Capital stock: (a) Preferred stock				
	(b) Common stock.	16916736	169167.31	169167.36	11011-1
21	Paid-in or capital surplus (attach reconciliation)	19110 1-36	T#3'!#3'.	167161.70	१६९१६गु
	Surplus reserve (attach schedule)				
	Earned surplus and undivided profits.		(78 75)	5 mm E	-14~5118.97
и.	Total liabilities and capital.	The court of the court of	31913		
	ITEMIZED ENTRIES MADE BELO	W MIET BE I	DENGIELED BA	COOLDIN	Nove
	Schedule M-1.—RECONCILIATION OF INC				
•	Not income per books.				2N
	Federal income tax.	1	recorded on books		
		cluded	in this return (itemiz	•)	
	Excess of capital losses over capital gains				
		· · · · · · · · · · · · · · · · · · ·			
	year (Itemize)	: 10 			
		B. Deduct	ione in this tow not	urn not charged	
					A 4 4 5 5
			book income this ye		
5.	Expenses recorded on books this year not de-	against		oar (itemize)	
5.	Expenses recorded on books this year not deducted in this return (itemize)	against	book income this ye	oar (itemize)	
5.		against	book income this ye	sar (itemize)	
5.	ducted in this return (itemize)	against	book income this ye	sar (itemise)	N-VE
5.	Total of lines 1 through 5(417 >>A	9.	Total of lines 7 and (line 28, page 1)—	8line 6 less 9	(4177598
s.	Total of lines 1 through 5(417 >>A	9.	Total of lines 7 and (line 28, page 1)—	8line 6 less 9	(4177598
6.	Total of lines 1 through 5(1772A Schodule M-2.—ANALYSIS OF EARNED SURPLUS	9. 10. Income	Total of lines 7 and (line 28, page 1)—	8line 6 less 9	(4177598
6.	Total of lines 1 through 5	9. 10. Income AND UNDIVIE	Total of lines 7 and (line 28, page 1)—DED PROFITS PE	8line 6 less 9	(4177598
6. 6.	Total of lines 1 through 5(1772A Schodule M-2.—ANALYSIS OF EARNED SURPLUS	9. 10. Income AND UNDIVIE	Total of lines 7 and (line 28, page 1)—DED PROFITS PE	8line 6 less 9	(4177398
s. 6.	Total of lines 1 through 5	9. 10. Income AND UNDIVIE	Total of lines 7 and (line 28, page 1)—DED PROFITS PE	8line 6 less 9R BOOKS (line 2	(4177598
1. 2.	Total of lines 1 through 5(41779) Schedule M-2.—ANALYSIS OF EARNED SURPLUS Balance at beginning of year	9. 10. Income AND UNDIVIE	Total of lines 7 and (line 28, page 1)—DED PROFITS PE	8line 6 less 9R BOOKS (line 2	(4177398
s. 6.	Total of lines 1 through 5(41779) Schedule M-2.—ANALYSIS OF EARNED SURPLUS Balance at beginning of year	9. 10. Income AND UNDIVID	Total of lines 7 and (line 28, page 1)—DED PROFITS PE	8line 6 less 9R BOOKS (line 2	(4177398
1. 2.	Total of lines 1 through 5(41779) Schedule M-2.—ANALYSIS OF EARNED SURPLUS Balance at beginning of year	9. 10. Income AND UNDIVID	Total of lines 7 and (line 28, page 1)—DED PROFITS PE	8line 6 less 9R BOOKS (line 2	(4177398
1. 2.	Total of lines 1 through 5(41779) Schedule M-2.—ANALYSIS OF EARNED SURPLUS Balance at beginning of year	9. 10. Income AND UNDIVID	Total of lines 7 and (line 28, page 1)—DED PROFITS PE	8line 6 less 9R BOOKS (line 2	(417VSAS-
6. 1. 2.	Total of lines 1 through 5(41779) Schedule M-2.—ANALYSIS OF EARNED SURPLUS Balance at beginning of year	9. 9. 10. Income AND UNDIVID	Total of lines 7 and (line 28, page 1)—DED PROFITS PE	8line 6 less 9R BOOKS (line 2	(417VSAS-

MINUTES OF BOARD OF DIRECTORS MEETING

OF REALTY TRANSFER CORPORATION

On June 4, 1962 the first meeting of the Board of Directors of Realty Transfer Corporation was held at the office of George Melter, 600 Old Country Road, Garden City, N. Y.

Present were:

George Melter Jack Malawer Irving Malawer Irving M. Weider

which constituted all of the stockholders of the corporation, in addition to being the entire Board.

At the meeting, it was decided that the stock to be issued by the corporation would be issued pursuant to Section 1244 of the Internal Revenue Code.

Accordingly, a plan was adopted whereby 50 Shares of Common Stock having a par value of \$5.00 per share would be issued over a period of not more than 2 years from the date of the adoption of the plan (June 4, 1962) and for an aggregage amount not to exceed \$500,000.00.

The following schedule will show how the stock certificates are to be issued.

Shares to be issued on above

 Jack
 Irving
 George
 Irving

 Date
 Total
 Malawer
 Malawer
 Melter
 Weider

 June 4, 1962
 50
 9-5/8
 9-5/8
 11-1/2
 19-1/4

\$169,167.36 \$27,782.97 \$27,782.96 \$24,056.57 \$89,544/86

2 sette

1	book?
2	A Melter did show me a book yes sir.
3	Q Do you have any personal knowledge as to the
5	whereabouts of that minute book?
6	A I told you, George Melter has died, and a lot
7	of things cannot be found.
8	Q All right, let me ask you this. Who wrote do
9	you know who wrote this document right here? Exhibit 62 marked for identification?
10	Λ It happens to be typed.
11	Q Well did someone type it contemporaneously with
12	the meeting or did someone write at the time of the meeting
13	and then type it?
15	A George Melter made notes and I guess it was typed
16	after the meeting. There was no one sitting there, there
17	was no typist in the room while I was there.
18	Q Did you see can you excuse me can you identify the signature on the bottom of this document?
19	A Yes, it looks very much like George Melter's
20	signature. I cannot swear to it, but it certainly looks
21	like his signature.
23	Q All right. I'd like to have this marked for
24	identification.
25	THE CLERK: Respondent's Exhibit AL for identifi-

have this marked for s Exhibit Al. for identifi-

cation.

1	MR. TEPPER: 1'11 try, Your Honor. Mr. Knopf, L
2	show you a document headed up "Minutes of Board of Directors
3	Meeting" of Realty Transfer Corporation.
	THE COURT: Mr. Tepper, let me interrupt you a
5	minute. This gentlemen was not an officer of the corporation
6	was he?
7	MR. TEPPER: No. But let me
8	
9	THE COURT: What
10	MR. TEPPER: If I can develop it
11	THE COURT: On what basis can testify to this
12	any more than any other anybody else reading it and
	testifying.
13	MR. TEPPER: Well, if I can follow this, I can
14	show you, Your Honor.
15	THE COURT: Well first qualify him as to how he
16	can testify to this.
17	
18	MR. TEPPER: Are you familiar with the amounts
19	shown on this document, as of June 4, 1962?
20	A Yes I am sir.
21	Q Where do these numbers come from?
22	A Well, these were probably given to me by Mr. Melter
23	but I think our worksheets will bear those out, because
24	I have the '62 sheets . here and as to the Malawer investments,
25	I have that precise figure , \$27,782.97 and this is Irving

I have these too.

Jack and Irving separately.

1	Q And this in semation was supplied through
2	. A By Mr. Melter, because I would not be privy to
3	any money that Mr. Melter
. 4	Q Well I'm concerned with Jack and Irving Malawer.
5	A Jack and Irving, yes, and verified by the figures
6	I have here.
7	Q And these figures tie out with your worksheets?
s	A Yes sir.
9	Q I'd like to put it in evidence, Your Honor. This
10	has not been made part of the Stipulation. The questions
11	raised by the respondent about the minutes, we have supplied
12	and may I clarify one point, Your Honor. We had supplied
13	originally to the respondent a Xerox copy of original minutes
1.1	He does not have the original minutes signed. These are
15	a ribbon copy, a duplicate signed, a duplicate copy of the
16	minutes signed by George Melter with the attorney and the
17	stockholders.
18	THE COURT: Where did this thing come from?
19	MR. TEPPER: This was in a file that was located
20-	about a week to ten days ago. Part of it was it was put
21	away in another accounting file.
22 .	THE COURT: Who had that file in their
23	custody?
24	MR. TEPPER: It was an old accounting file.
25	THE COURT: I say who had that file in their

1 number, also, the wor architect is ditteed and the tigure is \$2,160.00. Apparently that's the request that was made of the Malawers for their share of the disbursement that was going to be made that day. THE COURT: Now, don't these speak for themselves, Mr. Tepper? MR. TEPPER: I think they would, except that in 8 maybe some areas where you may have to explain one or two entries, possibly. But I can submit that as it sits. THE COURT: That's been admitted. MR. TEPPER: Your Honor, -- Mr. Knopf --Yes sir. 13 -- the items and totals on the cash sheets would then reflect the entries made on the minutes dated June 4, 1962? Um-hum. MR. DAVIDSON: Objection, Your Honor, -

THE COURT: That speaks for itself.

MR. DAVIDSON: Yes, Your Honor, in addition this witness has previously testified that these were the personal records of Irving and Jack Malawer and now --

THE COURT: What Mr. Tepper is saying, counsel, is that his personal records show that an amount equivalent .to those that the minutes show was, in fact, contributed to the venture as of that day. I don't think he needs to

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testify to that. If he minutes are legitimate, they show a figure and this shows a figure. And if the figures are the same, why we don't need anybody to tell us that.

THE WITHESS: Shall I continue?

MR. TEPPER: Well, now the Judge said that the figures speak for themselves, it's in evidence.

A I see.

Your Honor, these items will tie out with some of the invoices that are attached to the Stipulation for that period. We had started originally in explaining why the returns were filed late, but I think we went backwards.

We took care of the -- I was trying to lay the groundwork as to the background for the entire relationship so that the filing late doesn't make any difference at the present time. We've covered the areas that I wanted to cover.

Mr. Knopf, on the tax return, the amended corporate tax return for 1964, indicates -- it's part of the Stipulation-- indicates a loan was payable to shareholders.

- A At the close of the year?
- Q Yes at the close of the year?
- A Shall I indicate the amount? All right, \$227,648,51.
- Q Now was that any part of that considered as that -- any 1244 stock in your computation of the loss?

MR. DAVIDSON: Your Honor, how can this

See Childs v. Commissioner, 408 F.2d 531, 533 (3d Cir. 1969). Petitioner did not meet his burden with respect to the adoption of a plan to issue section 1244 stock or with respect to the issuance and payment for section 1244 stock.

We conclude that petitioner has not presented sufficient evidence to meet his burden of proof that Realty Transfer adopted a plan to issue section 1244 stock, in accordance with section 1244(c)(1)(A), or that Realty Transfer issued stock pursuant to such plan, as required by section 1244(c)(1)(D). Accordingly, any loss sustained by petitioner as a result of his investments in Realty Transfer must be deemed a capital loss.

Decision will be entered for the respondent.

to meet petitioner's burden. The conclusion is inescapable that the attempt to qualify the stock as section 1244 stock was an afterthought.

Petitioner has failed to provide the records required by section 1.1244(e)-1, Income Tax Regs., respecting the issuance of the alleged section 1244 stock. Neither the corporation nor the taxpayer record-keeping provisions have been met. The purported corporate minutes only state the amount of stock to be issued over a period of time for a stated consideration. Such minutes do not constitute proof that the stock was in fact issued. See Bernard Spiegel, 49 T.C. 527 (1968).

The fact that petitioner made equity investments in Realty Transfer in excess of the amounts contained in the purported section 1244 plan does not imply that such investments were made pursuant to the plan. On the contrary, petitioner's inability to distinguish among qualifying section 1244 investments and other equity investments is manifest in his failure to produce stock certificates, names, or dates for the issuance of section 1244 stock, or to correlate disbursements to Realty Transfer with the

purchases of section 1244 stock. Petitioner concededly had the Realty Transfer stock books in his possession, yet he did not introduce them into evidence at trial. Thus, a presumption arises that the information contained therein would not support petitioner's claim to the deduction.

Albert L. Dougherty, 60 T.C. 917, 933 (1973); Peter E. Blum, 59 T.C. 436, 440 (1972); Estate of Dorothy E. Beck, 56 T.C. 297, 343-345 (1971); Wichita Terminal Elevator Co., 6 T.C. 1158, 1165 (1946), affd. 162 F.2d 513 (10th Cir. 1947).

In his individual income tax return for the taxable year 1964, filed on October 15, 1965, petitioner claimed a loss of \$112,321.91 on the sale of Realty Transfer stock, all of which was asserted to be section 1244 stock. On March 17, 1966, petitioner filed an amended return for 1964 in which he claimed \$84,587.07 as a loss on the sale of section 1244 stock. In both returns, the amount of ordinary loss claimed was limited to \$50,000, in accordance with section 1244(b). At trial, petitioner conceded that not more than \$27,782.96 of his \$84,587.07 loss was attributable to section 1244 stock. Petitioner's vacillations with respect to claimed deductions for section 1244 stock suggest that

petitioner has failed to establish that the corporation adopted a plan as required by section 1244(c)(1)(A) and, therefore, did not issue any stock pursuant to such plan as required by section 1244(c)(1)(D).

Petitioner contends that the copy of the purported minutes presented in evidence establishes the adoption of a plan for the issuance of section 1244 stock. Petitioner further contends that the corporation income tax return filed for 1962 establishes that stock was issued pursuant to the agreement because the capital stock outstanding as of December 31, 1962, exceeded the capital stock outstanding . at the beginning of taxable year 1962 by the exact amount stated in the purported plan. If the purported minutes are read in conjunction with the 1962 return, petitioner claims that his payment of \$27,782.96 is established as having been paid for the shares to be issued pursuant to section 1244. Petitioner claims that the issuance of stock certificates is not necessary to constitute petitioner a shareholder, because stock certificates are merely secondary evidence of ownership. What is crucial, petitioner claims, is the payment of consideration therefor, and petitioner has established his investment in Realty Transfer, a fact which respondent does not challenge.